

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

IN THE MATTER OF:

GENESIS REALTY, INC.)	Complaint No. R4-2004-0139
5710 LBJ FWY, SUITE # 322)	For
DALLAS TEXAS 75240)	Administrative Civil Liability

GENESIS IS HEREBY GIVEN NOTICE THAT:

1. Genesis Realty, Inc. (Genesis) is alleged to have violated requirements contained in State Water Resources Control Board Order No. 99-08-DWQ [NPDES Permit No. CAS000002] (hereinafter General Permit) for which the Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose civil liability under §13385 of the California Water Code (CWC). The General Permit regulates discharges of storm water associated with construction activities.
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on Genesis. Genesis will be notified at least ten days in advance of the date, time and place of the hearing. Genesis or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of a greater judicial civil liability.
4. In the event that Genesis fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:

BACKGROUND

5. Storm water runoff from Genesis's 3.5-acre construction site, WDID No. 4 19 S315808, located at 350 East Ocean Boulevard, City of Long Beach is regulated under the General Permit. On June 1, 2001, the State Water Resources Control Board (State Board) processed Genesis's Notice of Intent (NOI), signed by Mr. Gordon Ip, to comply with the terms of the General Permit.

ALLEGED VIOLATIONS

6. Genesis is alleged to have violated the following provisions of the General Permit:

I. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.

1. Objectives. Genesis failed to develop and implement a **complete** Storm Water Pollution Prevention Plan (SWPPP) to meet requirements in Sections A.1 through C.10.

II. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.

8. Sediment Control. Genesis failed to implement effective sediment and styrofoam control along the construction site's perimeters and at all operational inlets to the storm drain system; and

III. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.

- 5.b. Effective Housekeeping Genesis failed to maintain effective housekeeping practices to control pollutant sources.

7. On December 11, 2003, during a storm water inspection of Genesis construction project, Regional Board staff (Ann Zaskodna) observed the following:

a. The SWPPP was missing information on the following as required in the Permit:

- training of staff engaged in SWPPP preparation, implementation and permit compliance (A.12)
- a construction activity schedule (A.2)
- a maintenance schedule for BMPs (A.1.d)
- proposal of post- construction erosion and sediment controls (A.5.b.(6))
- responsible parties for long term maintenance of post construction BMPs
- copies of NOI and Waste Discharge Identification (WDID) number (A.5.c.(4))
- site inspection data (B.3)
- compliance certification (C.10.)
- SWPPP revision to include a sampling and analysis strategy for discharges that have been discovered through visual monitoring (A.1.f.)

b. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter. Sediment control, including sediment tracking to stabilize disturbed areas throughout the construction site, was not implemented.

c. §A.5.b.-(Effective Housekeeping); Site BMPs were not maintained and general housekeeping practices were ineffective to control potential pollutant sources.

8. On December 17, 2003, a Notice of Violation (NOV) was mailed to Genesis. The NOV cited the Permit violations observed by the Regional Board staff during the December 11, 2003 site

inspection. The NOV stated that to come into compliance with the provisions of the Permit, Genesis was required to:

- a. "Immediately develop, implement, and retain on site, a **complete** and appropriate SWPPP. The SWPPP must meet the standards outlined in section A.1-C.10 of the Permit."
 - b. "Immediately develop an inspection checklist including certification".
 - c. "Immediately implement effective sediment, erosion, wind erosion and sediment tracking control BMPs, and improve housekeeping practices in accordance with a schedule in your SWPPP. You shall submit a written certification to the Regional Board (to the attention of Ms. Ann Zaskodna) by January 30, 2004 stating that corrective measures have been effectively implemented and are being monitored. You must also submit copies of the revised and signed SWPPP by January 30, 2004."
9. Genesis failed to respond by the due date of January 30, 2004. On February 18, 2004, Regional Board staff left a phone message for Mr. Gordon Ip of Genesis regarding the expired due date (January 30, 2004). In a letter dated February 23, 2004, Genesis requested a three-month time extension to April 30, 2004 to submit information requested by the NOV.
 10. On March 3, 2004, the Regional Board staff granted Genesis an extension until March 31, 2004 to submit the revised SWPPP and achieve full compliance with BMPs.
 11. Genesis's letter of April 5, 2004 and Summit Builder's Construction Company letter of April 12, 2004 stated that the subject site was in full compliance regarding preparation of a revised SWPPP and implementation of all BMPs.
 12. Regional Board staff's re-inspection on May 18, 2004 noted numerous BMPs violations including sediment tracking, wind erosion and poor housekeeping. A Notice to Comply (NTC) was given to Mr. James Nelon of Summit Builder's Construction Company during the site inspection. Mr. James Nelon agreed to bring the site into full compliance by June 15, 2004.
 13. A Regional Board staff follow-up site inspection on July 7, 2004 confirmed that the site was in compliance on the day of the inspection.
 14. On August 16, 2004, the Regional Board re-inspected the site due to a complaint, which indicated that white small styrofoam particles generated during installation of insulation materials were leaving the site and blanketing the area located below the construction site. During the subject site inspection, Regional Board staff observed the following violations:
 - The SWPPP was missing site specific BMPs addressing installation of insulation material, particularly styrofoam as required in General Permit Section A.
 - Erosion control (wind) BMPs were not effectively implemented to stabilize the soil.

- Sediment control BMPs were not effectively implemented (broken sand bags and sediments were present on public streets inside the construction area).
- Sediment control, tracking BMPs were not effectively implemented (sediment tracking was noted along Ocean Boulevard and Seaside Way).
- General housekeeping practices were ineffective to control potential pollutant sources as required by the General Permit (Section A.5.b).

15. On August 20, 2004, a second NOV was mailed to Genesis. The NOV cited the Permit violations observed by Regional Board staff during the August 16, 2004 site inspection. The NOV stated that to come into compliance with the provisions of the General Permit, Genesis was required to:

- a. “Immediately develop and implement an addendum to the existing SWPPP. The SWPPP addendum must include site specific BMPs addressing installation of insulation material (styrofoam) and meet the standards outlined in section A.1-C.10 of the Permit.
- b. “ Immediately implement effective sediment, wind erosion and sediment tracking control BMPs, and improve housekeeping practices in accordance with a schedule in your SWPPP. You must submit by September 7, 2004 an addendum to the existing SWPPP addressing BMPs associated with installation of insulation materials. You shall certify in the SWPPP that corrective measures have been effectively implemented and are being monitored”.

16. On September 9, 2004 Regional Board staff received a SWPPP addendum and certification that corrective action have been effectively implemented and monitored.

17. On September 17, 2004 Regional Board staff (Ann Zaskodna) re-inspected the site and observed the following:

- a. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter. Sediment control, including control of sediment tracking was not implemented.
- b. §A.5.b.-(Effective Housekeeping): Site BMPs were not maintained and general housekeeping practices were ineffective to control potential pollutant sources.

POTENTIAL CIVIL LIABILITY

18. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a Regional Board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

19. Pursuant to § 13385(c)(1) of the CWC, Genesis is civilly liable for the sum of \$10,000 per day per violation of its General Permit. The total potential maximum civil liability assessment for the violations described herein is \$580,000 as set forth in the following chart:

POTENTIAL MAXIMUM PENALTY

<i>Penalty Category</i>	<i>Duration</i>	<i>Calculation</i>	<i>Total</i>
§A.1- (SWPPP Objectives)	12/11/03-1/30/04	(50 days X \$10,000/day)	\$500,000
§A. 8-(Sediment Control)	12/11/03 5/18/04 8/16/04 9/17/04	(1 day X \$10,000/day) (1 day X \$10,000/day) (1 day X \$10,000/day) (1 day X \$10,000/day)	\$10,000 \$10,000 \$10,000 \$10,000
§A.5.b-(Housekeeping)	12/11/03 5/18/04 8/16/04 9/17/04	(1 day X \$10,000/day) (1 day X \$10,000/day) (1 day X \$10,000/day) (1 day X \$10,000/day)	\$10,000 \$10,000 \$10,000 \$10,000
POTENTIAL MAXIMUM PENALTY			\$580,000

20. Pursuant to CWC §13385 (e), the Regional Board has considered the following factors in determining the amount of civil liability to be imposed:
- Nature, circumstances, extent, and gravity of the violations:
Genesis failed to develop and implement a complete SWPPP that identified all pollutant sources onsite, described and implemented BMPs according to a time schedule, and provided a maintenance schedule for post-construction BMPs. Implementation of adequate BMPs is critical at the site due to the short distance to the Pacific Ocean and high potential of impacting water quality. The discharge of construction pollutants such as suspended solids into surface water (Pacific Ocean) limits the passage of sunlight into water, and inhibits the growth of aquatic plants. Excessive deposition of sediments can destroy spawning habitat, blanket benthic (bottom dwelling) organisms, and abrade the gills of larval fish. Water shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses. Particularly the beneficial uses for waterbodies in the Marinas (Long Beach) are for industrial activities, navigation, recreational activities involving body contact in water, commercial and marine habitat. Therefore, a reduction from the maximum civil liability is not warranted.

- b. Susceptibility of the discharge to cleanup or abatement:
The discharge of construction pollutants (i.e. sediment and styrofoam) is not easily cleaned-up once released into the storm drain and the Pacific Ocean. The site is located approximately 1,200 feet from the Pacific Ocean. However, the evidence that the pollutants reached the Pacific Ocean or caused damage or injury is inconclusive, therefore, a reduction from the maximum civil liability is warranted.
- c. Degree of pollutants toxicity:
Construction pollutants (i.e.sediment) are toxic to aquatic life if discharged to receiving water. Because the evidence that construction pollutants have impacted receiving water is inconclusive, a reduction in the assessment of the penalty is warranted.
- d. Violator's ability to pay:
Genesis has not provided sufficient information for the Regional Board to determine its ability to pay.
- e. Effect on Permittee's ability to continue its business:
Genesis has not provided any information for the Regional Board to determine the impact that the proposed civil liability may have on its ability to continue its business.
- f. Voluntary cleanup efforts undertaken:
When the BMPs installed by Genesis proved to be inadequate to effectively control sediment and styrofoam, Genesis failed to cleanup the pollutants discharged from its construction site. Therefore, a reduction from the maximum civil liability is not warranted.
- g. Prior history of violations:
A review of Genesis's construction project file indicates no prior history of violations. Therefore, a reduction from the maximum civil liability is warranted.
- h. Degree of culpability:
Genesis partially complied with the terms of the General Permit by developing complete SWPPP by September 2004. Therefore, reduction from the maximum civil liability is warranted.
- i. Economic benefit or savings:
Staff has no information on economic benefit or savings by the discharger as a result of the violations.
- j. Other matters as justice may require:
An additional matter to consider includes time spent by staff of the Regional Board in evaluating the incidents of violation and preparing this Complaint and related documents. The Regional Board charges a rate of \$70 per hour for staff

cost recovery. With total staff time of approximately 75 hours, staff costs incurred by the Regional Board is estimated to total \$5,250.

$$75 \text{ hours} \times \$70 \text{ per hour} = \$5,250$$

21. After consideration of the factors stated in §13385(e) of the CWC, the Regional Board Executive Officer recommends that administrative civil liability be imposed by the Regional Board in the amount of \$85,250 which includes the following:
- a. CWC section 13385 civil assessment of \$10,000 per day for two violations each on 12/11/03, 5/18/04, 8/16/04 and 9/17/04; for a total of \$80,000. The two violations noted on each day are lack of sediment control (A.8) and poor housekeeping practices (A.5.b).
 - b. Reimbursement of \$5,250 in Regional Board staff costs (75 hours x \$70/hour).

RECOMMENDED CIVIL LIABILITY

<i>Penalty Category</i>	<i>Calculation</i>	<i>Total</i>
<i>For failing to comply with CWC section 13385</i>	CWC section 13385 - 4 days 2 violations each day x \$10,000/day	\$80,000
<i>Reimbursement for Staff Costs</i>	Staff expended 75 hours x \$70/hour	\$5,250
<i>TOTAL RECOMMENDED PENALTY</i>		\$85,250

22. Genesis may waive its right to a hearing. Should it choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on August 1, 2005. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$85,250 (payable to the State Water Resources Control Board-Cleanup and Abatement Account) shall accompany the signed waiver.

23. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Date

Jonathan S. Bishop
Executive Officer

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of Genesis Realty, Inc. to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0139 (Complaint) issued by the Regional Board Executive Officer. Genesis Realty, Inc. understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

Enclosed herewith in full payment of the civil liability is a \$85,250 check payable to "State Water Resources Control Board Cleanup and Abatement Account."

Genesis Realty, Inc. understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and imposition of, and the amount of, civil liability imposed. Genesis Realty, Inc. also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due in thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind Genesis Realty, Inc. in the making and giving of this Waiver.

Genesis Realty, Inc.

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Position: _____